

ABORTION RELATED FEDERAL POLICIES 1995 AND 1996 With Updates for 1997

This legislative report for 1995 and 1996 (104th Congress) also includes selected updates for the First Session of the 105th Congress (1997), issued April 25, 1997.

A. Appropriations

1. Asylum: Coercive Population Policies

The Asylum Provision in the Foreign Aid/State Department Authorization Bill (HR 1561, S 908) would allow asylum to Chinese nationals who can demonstrate that they face forced abortion or sterilization at home if deported. This policy was followed from 1987 to 1993 but was reversed by the Clinton Administration, which has plans to deport Chinese refugees fleeing coercive population policies. Rep. Chris Smith (R-NJ) chaired four days of hearings on this question in 1995. The Asylum Provision was contained in the Conference Report to HR 1561, which passed the House March 12, 1996, and the Senate two weeks later. The President vetoed this bill April 12, 1996. The House placed another asylum provision in the Immigration in the National Interest Act (HR 2202); this provision placed a cap at 1,000 persons per year. Later in the year, this asylum provision was included in the Omnibus Appropriations Bill (HR 3610) and was enacted into law.

2. District of Columbia Abortion Funding

The U.S. Constitution gives Congress the responsibility of appropriating all funds – both federal and local – for the District of Columbia. Since 1979, D.C. spending bills have restricted the use of *federal* funds to pay for abortions, except when the mother's life is in danger or in cases of rape or incest. However, the *local* funds were being used to pay for abortion on demand. In 1988 Congress added the Dornan Amendment that prevents *all* funds appropriated for D.C. from being used to pay for abortion except when the mother's life is endangered. In 1993 Congress did not pass the Dornan Amendment, returning to the pre-1988 policy. The Conference Report for the Fiscal Year 96 D.C. Appropriations Bill restored the Dornan Amendment but the report became stalled in the Senate. Subsequently, the prohibition on the use of both federal and local funds for abortions, except to save the mother's life or in cases of rape or incest, was included in various Continuing Resolutions, including the final C.R. passed April 25, 1996. Efforts to exclude this policy from Fiscal Year 97 appropriations were unsuccessful. As a result, this policy was again a part of Fiscal Year 97 law.

3. Embryo Research

Since 1975 the federal government has not funded experimentation on human fetuses in the womb unless it meets the health needs of the fetus or the risk is minimal. In 1993 Congress opened the door to funding research on human embryos created in the laboratory which have not been implanted in the womb. NIH set up an advisory panel to investigate the matter. December 2, 1994, NIH endorsed the advisory panel's call for federal funding of experiments on human embryos. In 1995, Reps. Jay Dickey (R-AR) and Roger Wicker (R-MS) sponsored an amendment banning federal funding of harmful embryo research. This provision was attached to the Fiscal Year 96 Labor, Health and Human Services

Appropriations Bill. When this bill became stalled in the Senate, the Dickey/Wicker Amendment was attached to a Continuing Resolution for Fiscal Year 96 programs. This funding ban was continued in Fiscal Year 97 appropriations.

4. Federal Employees Health Benefits

From 1984 to 1993, the Smith/Ashbrook Amendment to the Treasury/Postal Appropriations Bill prohibited the coverage of abortions in the Federal Employees Health Benefits program, except to save the life of the mother. However, in 1993 and 1994, Congress passed the bill without any abortion restrictions. The Fiscal Year 96 appropriations bill contained the Nickles Amendment prohibiting abortion funding except when the mother's life is endangered or in cases of rape or incest. This measure became law. Attempts to remove the policy from Fiscal Year 97 appropriations were unsuccessful and the policy was again included in law.

5. Hyde Amendment

Since 1976, the Hyde Amendment to the Labor/Health and Human Services Appropriations Bill has restricted the use of Medicaid funding for abortion. From 1981 to 1993, the amendment provided an exception only for life of the mother. In 1993, exceptions for rape and incest were added. Prior to 1976, the Medicaid program paid for about 300,000 abortions a year. After the Hyde Amendment was enacted, that number dropped dramatically. In Fiscal Year 95, 204 abortions were funded.

Istook States' Rights Amendment: Some states refused to pay for rape and incest abortions added in 1993. Their existing state funding policies were life of the mother only. The Clinton Administration, however, threatened to cut off all Medicaid funds to "noncompliant" states, leading to legal battles between states and the federal government. In 1995, Rep. Ernest Istook (R-OK) offered an amendment that would recognize the right of states not to fund abortions except to save the mother's life. The Istook Amendment passed the House but the Labor/HHS Appropriations Bill to which it was attached was stalled in the Senate and never passed. The Hyde Amendment was included in a C.R. The Istook Amendment continued to be debated as part of the Continuing Resolutions for Fiscal Year 96 but did not become law. No effort was made to include the Istook States' Right Amendment in Fiscal Year 97 law.

Medicaid Reform: The provisions of the current Hyde Amendment were added to the Medicaid Reform Bill in 1995 but never became law. Medicaid Reform had been incorporated into the Budget Reconciliation Bill, which was vetoed by President Clinton.

6. Mexico City Policy/Funding UNFPA: Smith Amendment

Mexico City Policy: At the 1984 U.N. Population Conference in Mexico City, the Reagan Administration announced a new policy denying U.S. population funds to private organizations overseas that promote or perform abortion as a method of family planning. Most family planning groups agreed to this policy. The International Planned Parenthood Federation and Planned Parenthood Federation of America were exceptions. Jan. 22, 1993, President Clinton overturned the Mexico City Policy by executive order.

United Nations Population Fund (UNFPA): Since 1985, the Kemp-Kasten Amendment to the annual Foreign Operations Appropriations Bill has denied funding to any organization overseas which, as determined by the President, supports or helps manage a program of coercive abortion or involuntary sterilization. The Reagan and Bush administrations denied funding to the UNFPA because of its continued support for China's coercive population control program. In the summer of 1993, the Clinton Administration issued a reinterpretation of the Kemp-Kasten Amendment and began funding the UNFPA.

104th Congress: In 1995, Rep. Chris Smith (R-NJ) offered an amendment that would restore the Mexico City Policy and deny funding to the UNFPA. At year's end, the House and Senate were deadlocked over this amendment and it did not become law. The White House was adamant that the President would veto any bill that contained the Smith Amendment, with special concern that the Mexico City Policy not become law. In 1996 the matter continued to be debated. January 25, 1996, Congress passed a Continuing Resolution (HR 2880) which included the Fiscal Year 1996 Foreign Operations Appropriations Bill (HR 1686). The Smith Amendment was excluded, but funding for overseas population programs was eliminated through July 1, 1996, and significantly reduced through September 30, 1997. After another heated debate, a similar arrangement was included in Fiscal Year 97 appropriations. Fiscal Year 97 monies would not be released until July 1, 1997 and then only at the rate of 8% of the total each month. However, if the President submitted a finding to Congress by February 1, 1997 that the delayed funding was detrimental to population planning programs, then Congress would be required to vote on a resolution to release funds starting March 1.

Update for 105th Congress: On January 31, 1997, the President did submit a finding that the delay was detrimental and Congress subsequently voted to release the funds by March 1.

7. Prison Abortion

In 1986, Congress passed a law prohibiting the use of federal funds to pay for abortions in prison, except to save the mother's life or in cases of rape. This policy also granted conscience protection to prison employees who did not wish to assist in facilitating the abortions. In 1993, Congress overturned this policy. The Fiscal Year 96 Commerce/Justice/State and Judiciary Appropriations Bill restored this policy but the bill was vetoed by President Clinton. The policy was then included in a January 1996 Continuing Resolution that became law. An attempt to remove this policy from Fiscal Year 97 law failed in the House on a voice vote and the policy was again included in law.

B. Authorization Bills

1. Assisted Suicide

Update for 105th Congress: Late in the last session of Congress, the Assisted Suicide Funding Restriction Act was introduced in the House with 120 cosponsors and in the Senate with 17 cosponsors. This bill ensures that federal tax dollars are not used to pay for and promote assisted suicide or euthanasia. This act was again introduced in the 105th Congress (HR 1003, S 304). The need for this proposed legislation is greater than ever. February 27, 1997, the federal appeals court for the 9th Circuit rejected a challenge to Oregon's law authorizing physician assisted suicide. The first ever such law of its kind in the U.S., the Oregon measure was approved by referendum in 1994. The way is

now open for federal funds to be used for assisted suicide under Oregon's Medicaid program and to force Catholic hospitals to advise patients on admission that they have a "right" to obtain lethal drugs for suicide. The federal Patient Self-Determination Act (PSDA) currently requires hospitals to counsel each patient about all treatment options allowed under state law, or to lose federal funding. The Assisted Suicide Funding Restriction Act would not only block federal funding for assisted suicide but also clarify the intent of the PSDA.

2. Conscience Protection: ACGME

The Accreditation Council for Graduate Medical Education (ACGME), a group that sets standards teaching hospitals must obey to maintain accreditation, adopted a new policy requiring Ob/Gyn residency programs to perform abortions as part of their training. This coercive policy became effective January 1, 1996. Prior to this, most programs treated abortion as an optional elective. In its final form, the ACGME policy included conscience protection for programs and residents with moral or religious objections but this left many programs unprotected. Also, those that invoked the conscience exception would risk being marginalized or stigmatized in the medical profession. The purpose of ACGME's new policy was to forcibly integrate abortion into the practice of medicine. Rep. Peter Hoekstra (R-MI) and Sen. Dan Coats (R-IN) introduced freestanding bills to prevent state and federal reliance on ACGME's coercive accreditation standards. Rep. Tom DeLay (R-TX) successfully offered a similar amendment to the Fiscal 96 Labor/Health and Human Services Appropriations Bill. At year's end, that bill was stalled in the Senate. In 1996, Congress included a version of these amendments in the final Fiscal Year 96 Continuing Resolution passed April 25. This language amends the Public Health Service Act and so is permanent law.

3. Military Hospitals

Reagan and Bush Administration policy prohibited the performance of privately funded abortions in military hospitals overseas, except to save the life of the mother. Jan. 22, 1993, President Clinton overturned this policy by executive order. In 1995, Congress restored the pro-life policy, adding exceptions also for rape and incest. The President allowed a defense appropriations bill with this policy to become law without his signature. He also vetoed, and later signed, a defense authorization bill restoring this policy. Attempts to exclude this policy from the Fiscal Year 97 Defense Authorization Bill failed and the policy remained in law.

4. Partial-Birth Abortion Ban

The Partial-Birth Abortion Ban Act would ban a particularly brutal and inhumane late-term abortion method, except when the mother's life is endangered. In this procedure, the child is removed from the womb feet-first and is delivered except for the head. The physician thrusts scissors into the base of the child's skull, inserts a catheter through the opening, and suctions out the child's brain. By the end of the session, House and Senate had passed slightly different versions of the bill. Subsequently, the House agreed to the Senate language. April 10, 1996, President Clinton vetoed the bill. Efforts to overturn the President's veto were successful in the House but fell short in the Senate. September 19, 1996, the House voted 285-137 to override, but on September 26, the Senate voted 57-41 to override, failing to muster the necessary two-thirds vote. To retain the right to move to reconsider the vote later, Sen. Trent Lott (R-MS), the Senate Majority Leader, switched his vote from "yea" to "nay." Sen. Ben Nighthorse

Campbell (R-CO) sent a letter from the hospital saying that if present he would have voted to override.

Update for 105th Congress: The Partial-Birth Abortion Ban Act of 1997 was introduced into the 105th Congress. March 20, 1997, the House approved the same version of this bill – now designated HR 1122 – as was passed in the last Congress. The vote was 295 yes, 136 no. Support for the bill exceeded the two-thirds mark, signifying sufficient strength to override a presidential veto. The Senate is yet to act on this measure; the Senate version is designated S 6.